IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 36 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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CHAUDHARI RAIMALBHAI VISABHAI & 3 - Applicant(s)

Versus

STATE OF GUJARAT - Respondent(s)

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Appearance :

MR AD SHAH for Applicant(s) : 1 - 4.
MR NC SOOD,LD.APP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 26/10/2005

ORAL JUDGMENT

1. The present Revision Application is preferred by the orig.accused tried and convicted by the ld.JMFC, Patan, while disposing of the Criminal

Case No.122 of 1985. The petitioners were charged for the offences punishable under Sections 147, 148, 323, 324, 325, 504 r/w. Section 149 of the Indian Penal Code as well as Section 135 of the Bombay Police Act. The petitioner-accused are victims of one cross-case registered with Patan Police Station and they are witnesses of the cross-case tried and decided by the ld.JMFC, Patan, for the offences punishable under Sections 147, 148, 323, 324, 325, 326, 447 r/w. Section 149 of the Indian Penal Code and also under Section 135 of the Bombay Police Act. After the trial, the ld.JMFC, Patan, convicted the accused persons of cross-case i.e. Criminal Case No.229 of 1985 and all those accused were held guilty for the offences, were sentenced to undergo rigorous imprisonment as well as total fine of Rs.80,000/- and the injured were also awarded compensation from the amount of fine. The ld.JMFC, Patan, convicted the present petitioners for different offences. The petitioner no.1 was held guilty for the offences

punishable under Section 325 of the Indian Penal Code and directed to undergo simple imprisonment for one year and to pay a fine of Rs.3000/- and in default, to undergo simple imprisonment for six months. The petitioner no.2 was convicted for the offences punishable under Section 324 of the Indian Penal Code and ordered to undergo simple imprisonment for six months and a fine of Rs.500/- and in default, to undergo simple imprisonment for six months. The petitioner no.3 was convicted for the offences punishable under Section 326 of the Indian Penal Code and ordered to undergo rigorous imprisonment for one year and to pay a fine of Rs.3000/- and in default, to undergo rigorous imprisonment for six months. The petitioner no.4 was convicted for the offences punishable under Section 325 of the Indian Penal Code and was sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.3000/- and in default to undergo simple imprisonment for six months.

2. The petitioners being aggrieved by the order of

conviction and sentence passed by the ld.JMFC, Patan, preferred Criminal Appeal No.17 of 1991, before the Court of Sessions, Mehsana. However, the ld.Additional Sessions Judge, Mehsana, dismissed the appeal of the present petitioners-accused and confirmed the order of conviction and sentence in both the cases. The convicts-accused of cross-case have preferred the Criminal Revision Application and the same is heard along with the Revision Application being Criminal Revision Application No.37 of 1993. The order of conviction and sentence passed by the ld.JMFC, Patan and confirmed by the ld.Additional Sessions Judge, Mehsana, while deciding the Criminal Appeal, has been assailed mainly on the grounds mentioned in paragraph:6 of the memo of the Revision Application and Mr.A.D. Shah, learned senior counsel appearing for the petitioners, has developed all the grounds mentioned in the memo of the Revision Application. However, he has concentrated his arguments mainly on the following grounds :

(i) That the learned Judge ought to have seen that there was no specific charge against the accused for individual liability and all the accused were charged with the offences with constructive liability. Thus, the absence of charge as to the individual act has caused great prejudice to the accused in defending their case and meeting the charge.

(ii) That both the lower Courts had seriously erred in recording the order of conviction of the accused for individual acts particularly when the charge of unlawful assembly was held not to have been proved.

(iii) That both the lower Courts ought to have seen that there were cross

cases and there was documentary evidence adduced on the record of the case to show that petitioners-accused side was in possession of the field. Actually, the learned Magistrate recorded the finding in favour of the accused. Thus when the accused were shown to be in possession of the field in question, then the act on the part of the prosecution witnesses Amrabhai Ratnabhai and Bhagabhai Visabhai in carrying out cultivation is absolutely illegal and the accused had absolute right to defend their possession of the field as well as to avoid any physical assault.

(iv) That the learned Magistrate had seriously erred in convicting the petitioner-accused Valabhai Kalabhai for the offence

punishable under Section 326 of the Indian Penal Code, particularly when there was even no charge of causing grievous hurt punishable under Section 326 of the Indian Penal Code r/w. vicarious liability under Section 149 of the Indian Penal Code. All the accused were charged for causing grievous hurt punishable under Section 325 r/w. Section 149 of the Indian Penal Code. Thus, the offence punishable under Section 326 being a major offence, the accused no.3 could not have been convicted for the said offence under Section 326 of the Indian Penal Code.

(v) That both the lower Courts seriously erred in placing reliance on the evidence of prosecution witnesses, whose

version written statement full of contradiction and not even fully supported by medical evidence. All these witnesses were highly interested as they are also accused in the cross-case and being th aggressor, they were bound to minimise the role played by them.

3. It is argued by Mr.Shah that the ld.trial Judge has impliedly accepted, while acquitting the accused from the charge of offences punishable under Sections 147, 148 and 149 of the Indian Penal Code and none of the accused has been held guilty for the offence punishable under Section 34 of the Indian Penal Code. It is further argued that the petitioners are the victims of the incident and they never formed any unlawful assembly and there is no common intention to cause injuries to otherside and in view of nature of injuries sustained by some of the petitioners, they could not ably inflict blows

on the injured prosecution witnesses and if it is presumed that the petitioners attacked initially and they were successful in giving blows to the accused of cross-case, would not have ably inflicted the blows on the body of the petitioners.

4. The element of free fight is materially missing and therefore only, the accused of the cross-case have been held guilty and all of them have been held guilty in the cross-case. There is utter failure on the part of both the lower Courts in appreciating the evidence of the person interested in the result of the case; especially when he is one of the accused of cross-case. The failure on the part of the prosecution witnesses to explain injuries on the part of the body of the persons accused has also not been appreciated in the present case.

5. The ld.APP appearing for the State has argued that both the lower Courts have appreciated the evidence oral as well as documentary evidence

in its true perspective and when it was found that both the parties were ready to fight with each other and they were holding weapons which can be termed as deadly weapons, the order of conviction and sentence should not be disturbed and the Revision Application should be dismissed saying that the concurrent findings recorded by both the lower Courts is not required to be disturbed.

6. I have considered the rival contentions and Mr.A.D.Shah, learned senior counsel appearing for the petitioners, has taken me through the relevant part of the evidence and the Court finds that the order of conviction and sentence recorded by the ld.JMFC and confirmed by the Sessions Court, is erroneous and the same is required to be reversed and for that I would like to assign reasons in short as under because the ld.APP, in response to the query raised by the Court, has submitted that the State is not interested in detailed discussion of the reasons.

7. The present petitioners are victims of cross case and it emerges from record that when the incident occurred, all the accused were present at or in the field known as 'Tebawala' situated in the land bearing Survey No.1104 within the revenue limits of village Kansa. The police was not sure on the day on which it filed chargesheet against both the parties of cross FIR that which party can be said to be the assailant. But the presence of the present petitioners in the agriculture field or in nearby area is found natural from the evidence led by the prosecution and the facts gathered during the cross-examination of the prosecution witnesses, mainly the injured witnesses. It is not a matter of dispute that when the quarrel took place. The dispute as to the ownership and possession of the field in question was existing since 1981 and there were criminal cases between the parties. So there was enmity between the parties. But after discussion of the evidence led by the prosecution, the ld.trial Judge has

recorded that the case of the prosecution qua the constitution of unlawful assembly is not acceptable and as per the village Form no.7/12, indicative of possession and enjoyment, suggests that the present petitioners or their relatives were in possession and enjoyment of the said field. As per the record of right maintained by the Government, the petitioners-accused Raimal Visa and Rugnath Kala are shown to be the owners of the said field situated at Survey No.1104. So the petitioners-accused had right to protect their property and themselves and when it is specifically recorded that all the accused persons had not reached to the disputed field with an intention to assault the prosecution witnesses then they ought not have been linked with any crime in their individual capacity because the case of the prosecution does not get any foundation that it was a free fight even at the instance of present petitioners. When the ld.trial Judge has acquitted all the accused from the charges punishable under Sections 147, 148 and 149 of Indian Penal Code, in that

situation, the finding recorded by the ld.trial Judge and confirmed by the Court of Sessions is found erroneous and it is apparently based on incorrect appreciation of oral as well as documentary evidence.

8. Undisputedly, no prosecution witness has received any injury, which can be said to be a grievous injury caused by deadly weapons and especially there was no specific charge of the offence punishable under Section 326 of the Code of Criminal Procedure, 1973 against the accused Vala Kala and hence, he could not have been convicted for the said offence because he was not even facing prosecution of any charge graver than the offence punishable under Section 326 of the Indian Penal Code. The offence punishable under Section 326 of the Indian Penal Code is a grave offence and in absence of specific charge, the accused Vala Kala ought not have been linked with the said crime. It would be contrary to the basic accepted principles of criminal jurisprudence.

9. The nature of injuries found on the body of the accused persons has not been satisfactorily explained by the prosecution witnesses and it is clear from record that all the four accused had sustained bleeding injury during quarrel on the date of incident. The description of injury found on the body of the prosecution witnesses were not of very serious nature and the injuries on the body of the PW-Parmabhai Visabhai, PW-Kuberbhai and prosecution witness-Punjabhai were possible on their fall, is the opinion expressed by the doctor PW-Harinkumar Punjabhai Vaniya. The injury on the body of PW-Kashiram was not found grave and it could have been by any hard and blunt substance.

10. The co-accused of the present petitioners namely Chaudhari Vela Visa, Chaudhari Bhagwan Visa and Jesingbhai Ganeshbhai, had sustained grave injuries when they were examined by the doctor on 06th October, 1984 at about 11-10 a.m. and the petitioner-Vala Kala had sustained five

injuries and Jesingbhai Ganeshbhai had sustained four injuries. The accused who has been acquitted i.e. Bhagwan Visa, was injured on palatal region and it was CLW (continued lacerated wound) of 3 cms. by 0.5 cms. along with an incise wound on his left elbow and incise wound between the shoulder and left elbow. He has sustained three injuries on the left hand and three out of total accused persons prescribed, have sustained injuries on their respective head and practically all of them had sustained injuries on their hand. So it was not possible to give any blow to the otherside. So it is likely that with a view to protect themselves and possession of the agriculture land, some attempts were made by the accused and other co-accused who have been acquitted when an attempt was made to dispossess them by the otherside. So the theory of self-defence clearly emerges from record and both the lower Courts have totally ignored this aspect. When there was no scope to consider this aspect that the accused could have legitimately used their right

to private defence, whether any of then can be convicted for their individual alleged wrong.

11. One important aspect which is found relevant is that no appeal is preferred against the order of acquittal recorded by the ld.trial Judge in favour of the co-accused and also in favour of the accused qua their acquittal from the charges punishable under Sections 147,148 and 149 of the Indian Penal Code. It appears that the ld.Sessions Judge has mechanically confirmed the order of conviction recorded by the ld.JMFC and the view of ld.trial Judge is found to be moral than legal. The petitioners ought not have been convicted by the ld.trial Judge merely because the agriculturists take recourse to fight out at the spot for redressal of dispute qua agricultural land. On the one hand, the ld.JMFC held that the present petitioners and/or their relatives are persons prima facie authorised to hold possession and enjoyment of the land in question as per the Government record. Hence, their presence on the disputed land or nearby

area cannot be unnatural. None of them was holding any weapon which cannot be said to be agricultural equipment and there was no reason for the prosecution witnesses to go to the said field in group or forming an assembly with weapons or instruments that can be used for causing injuries, when the dispute was going on qua the very field since 1981.

12. When the Court found that the accused of cross-case are guilty for the offence punishable under Section 147 or 149 of the Indian Penal Code, then at least the present petitioners could not have been linked with any offence even under the principle of minimum liability. So the arguments of Mr.A.D. Shah, learned senior counsel appearing for the petitioners-accused, are hereby accepted.

13. In response to the query raised by the Court, Mr.N.C.Sood, ld.APP, appearing on behalf of the respondent-State has fairly accepted that in view of the accepted principles of appreciation

of evidence, the petitioners-accused could have been given benefit of doubt. The ld.APP has also submitted that the finding recorded by the ld.JMFC as to the possession of the field when the incident occurred positively helps the present petitioners and the tilling activities in the very field by Amrabhai Ratnabhai and Bhagabhai Visabhai, therefore, cannot be said to be legal. So the petitioners had absolute right to defend their possession of the field as well as to avoid any physical assault. With a view to avoid grievous injury on their respective body, they can make all attempts including the use of agricultural equipment which they were having. On appreciation also, it is found that there is no element of chasing the prosecution witnesses with a view to cause injuries. On the contrary, the prosecution witnesses are found aggressors. So the present petitioners have tried to minimize their responsibility and this activity of minimizing the responsibility makes the accused entitled to avail plea of self-defence.

14. In view of above observations, the present Revision Application is hereby allowed. The finding recorded by the ld.trial Judge holding the petitioners guilty and confirmed by the ld.Sessions Judge is found erroneous and therefore, the judgment and order of conviction recorded shall have to be reversed. The judgment and order of conviction of all the petitioners-accused recorded by the both the lower Courts is hereby quashed and set aside. The petitioners-accused are hereby ordered to be acquitted. It is also relevant to note that the prosecution witnesses who are accused of cross-case are held responsible even by this Court while dealing with Revision Application preferred by them against the order of conviction recorded by the ld.trial Judge and confirmed by the Sessions Court in Criminal Appeal preferred by them and they are held guilty for the offences punishable under Sections 147, 149, 326, 447, etc. of the Indian Penal Code and in this background, the present Revision Application is hereby allowed and the petitioners are acquitted of the charges

levelled against them. The orders of conviction and confirmation are set aside.

15. On acquittal of the petitioners-accused, the bail bonds executed by the petitioners-accused shall stand discharged. The amount of fine, if any paid, by the petitioners-accused shall be refunded to the respective petitioner-accused on identification. The muddamal, if any, be destroyed. Direct Service is permitted.

(C.K. Buch, J)

Aakar